

S. Riback



Comptroller General
of the United States

453146

Washington, D.C. 20548

REDACTED VERSION

Decision

Matter of: Facilities Management Company, Inc.

File: B-259731.2

Date: May 23, 1995

J. Eric Andre, Esq., Howrey and Simon, for the protester.
J. Patrick McMahon, Esq., for NCI Information Systems, Inc.,
an interested party.
Walker L. Evey, Esq., National Aeronautics and Space
Administration, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that agency miscalculated protester's technical proposal is denied where record shows that there was a reasonable basis for downgrading the protester's proposal in every instance where the agency did so.
2. Agency's upward adjustment of protester's proposed cost during cost realism evaluation was unobjectionable where record shows that protester understated at least one cost element, and upward adjustment of that element alone was sufficient to increase protester's evaluated cost above the evaluated cost of the technically superior awardee.
3. Agency could properly make award on the basis of initial proposals where solicitation advised offerors of this possibility and contracting officer's decision not to engage in discussions was reasonable.

DECISION

Facilities Management Company, Inc. (FMC) protests the award of a contract to NCI Information Systems, Inc. under request for proposals (RFP) No. D-12211, issued by the National Aeronautics and Space Administration (NASA) for administrative, logistics, facilities management and library

*The decision issued on May 23, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

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operations services at its headquarters facilities in Washington, D.C. FMC maintains that the agency's technical and cost evaluations of its proposal were unreasonable, that NASA improperly failed to engage in discussions during the acquisition, and that the agency made an unreasonable cost/technical tradeoff in awarding to NCI.

We deny the protest.

The RFP contemplated the award of a cost-plus-award-fee contract and requested that offerors submit technical, business management, and cost proposals. Firms were advised that the agency would assign point scores to the proposals under several technical evaluation criteria and would evaluate cost proposals for realism and probable cost. The RFP further advised that additional considerations--such as financial capacity and other elements relating to the offerors' capabilities--would be evaluated without point scoring to determine whether the offerors possessed the necessary capacity and credit to perform the requirement. The RFP provided that award would be made to the firm whose proposal offered the best overall value to the government; for evaluation and award purposes, the RFP provided that technical and cost considerations were approximately equal in weight, and that each was more important than the other considerations.

NASA received numerous proposals including FMC's. The agency point scored the technical proposals, performed a cost realism evaluation, and reviewed the other considerations for purposes of determining whether the offerors possessed the necessary capacity. Based on this evaluation, NASA found that at least three proposals demonstrated a superior understanding of the requirement; NASA also made certain adjustments to each firm's cost proposal. NASA concluded that the benefits from engaging in discussions with the offerors would be marginal, and therefore made award to NCI based on initial proposals, having determined that the firm's proposal--rated third highest from a technical standpoint, and containing the lowest evaluated cost--offered the best overall value to the government. FMC was rated fifth from a technical standpoint and was found to have the second-lowest evaluated cost.

TECHNICAL EVALUATION

NASA identified four major and six minor weaknesses in FMC's proposal. FMC takes issue with virtually every one of the agency's findings, maintaining either that there was no basis for downgrading its proposal in these areas or that the agency should have sought clarification of the firm's proposal before downgrading it. FMC contends that, had the agency more carefully reviewed its proposal and/or obtained

clarification of certain information, it would not have so significantly downgraded the firm's proposal. FMC concludes that a proper evaluation would have moved FMC into line for award.

In reviewing challenges to an agency's technical evaluation, we do not independently evaluate proposals or substitute our judgment for that of the agency. Polar Power, Inc., B-257373, Sept. 2, 1994, 94-2 CPD ¶ 92. Rather, we review the record only to ensure that the agency's evaluation was reasonable and consistent with the RFP's evaluation criteria and applicable statutes and regulations. Id. We have reviewed each of FMC's allegations and conclude that NASA's downgrading of its proposal is supported by the record. For illustrative purposes, we discuss two of the major weaknesses and two of the minor weaknesses identified by the agency.

Library Staffing

The solicitation called for the contractor to perform library support services at NASA's headquarters library. These services included supporting NASA's archiving requirements (including maintenance of the agency's History Division collection), and the agency's program and project management initiative (P/PM) collection (a collection of material dealing with management projects and programs at NASA). With respect to the archiving support function, the RFP required the contractor to prepare all materials to be archived in a manner reflecting minimum preservation standards to ensure that the archived materials are properly packaged and preserved for archival storage; the contractor also was required to assist NASA's library staff in appraising, arranging, and accessioning materials deposited with the library's History Division. With respect to the P/PM collection, the RFP required the contractor to maintain and develop the collection, and to provide reference services for individuals using the collection.

NASA identified a major weakness in FMC's proposal in the area of library support because of the composition of its proposed staff. In the archives support area, the evaluators were concerned that FMC proposed to handle this function using a reference librarian rather than an archivist. The evaluation materials explain that this was a concern because a reference librarian lacks the archiving expertise necessary to properly perform the function; reference librarians are not trained in (1) collecting and selecting materials that are historically significant, (2) properly preserving these materials for long-term storage, or (3) properly indexing such materials for retrieval. Similarly, NASA criticized FMC for proposing only a general reference librarian to oversee the P/PM

collection. NASA criticized FMC's proposal because a general reference librarian does not have the detailed expertise in the areas of business and management principles necessary to manage and develop the collection.

FMC does not allege that it proposed an archivist; it merely asserts that a reference librarian and an archivist perform similar functions, and that it intended to [deleted]. While the firm may well have intended to [deleted], there simply is no indication in FMC's proposal that it was offering any personnel with the particular expertise required to perform the archiving function. In fact, FMC's proposal does not even include resumes for any of the proposed reference librarians. Likewise, there is no information in FMC's proposal to show that its proposed personnel have the required expertise to oversee the P/PM collection. We conclude that NASA reasonably downgraded FMC's proposal for this reason.

Staffing Inconsistencies

NASA also found as a major weakness in the FMC proposal persistent inconsistencies between the protester's staffing matrix and its narrative technical proposal. NASA's evaluators found, for example, that there were inconsistencies between FMC's staffing matrix and its narrative proposal for mailroom workers, word processors, warehouse personnel, and library staff. NASA concluded that these inconsistencies made it impossible for the evaluators to fully understand FMC's proposed approach to staffing the contract, and that they brought into question FMC's attention to detail in preparing its proposal.

FMC does not maintain that these inconsistencies did not exist; it suggests only that NASA should have brought these inconsistencies to FMC's attention and permitted FMC to revise its proposal to eliminate them. As more fully discussed below, we have no basis to conclude that NASA was required to engage in discussions before making its award decision. We find, however, that the inconsistencies noted by the evaluators are evident from a review of FMC's proposal. Since the RFP specifically required offerors to describe in detail their staffing approach, including a discussion of the number and types of personnel to be assigned to perform the work in each functional area, we think that NASA acted reasonably in downgrading FMC for this reason; simply stated, NASA could not adequately assess the suitability of FMC's staffing plan because it was not clearly presented in the firm's offer.

Corporate Firing Policy

The agency identified as a minor weakness the fact that FMC's proposal did not discuss the firm's corporate policy relating to firing personnel, as required by the RFP's instructions. The evaluators concluded that this omission reflected a lack of depth in the firm's corporate infrastructure. We have reviewed FMC's proposal in this area and find that the evaluators' concerns are borne out; while FMC's proposal contains a section entitled "hiring, firing, promotion and other policies," nowhere is the firm's firing policy discussed. We therefore find that NASA reasonably downgraded the firm's proposal for this reason.

Custodial Supplies

NASA criticized FMC's proposal for failing to identify the types and quantities of janitorial materials and equipment to be used during performance that would not be provided as government-furnished supplies or equipment. The statement of work specifically required offerors to furnish certain janitorial supplies and advised firms that:

"the proposal must also identify the types and quantities of all necessary materials, equipment and facilities and how they will be acquired (if not provided by the government in accordance with this solicitation)."

Our review of FMC's proposal confirms this omission. FMC maintains that this omission was irrelevant because some of these supplies were government-furnished property. However, since the RFP did require the contractor to provide many of these supplies, the failure of FMC's proposal to address this requirement provided a reasonable basis for downgrading the protester's proposal in this area.

We conclude that the agency's technical evaluation was reasonable and in accordance with the terms of the RFP.¹

¹FMC also maintains that the agency's evaluators failed to score proposals in accordance with the agency's source selection plan because the individual evaluators did not assign point scores for every evaluation subelement, and instead assigned consensus scores in the major evaluation areas. This allegation is without merit. First, an agency's source selection plan is no more than internal guidance for the agency's evaluators and does not confer rights on any outside party. Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159. The record here shows that the evaluators in fact performed the same

(continued...)

COST EVALUATION

FMC takes issue with NASA's cost realism evaluation in two respects: the upward adjustment of the firm's general and administrative overhead (G&A) rate, and the upward adjustment of its subcontractor's direct labor costs. FMC maintains that it, rather than NCI, would have had the lowest-cost proposal had the agency not made these improper adjustments; FMC's proposed costs were adjusted upward by [deleted] for G&A and [deleted] for its subcontractor's direct labor. FMC concludes that, because cost and technical considerations were approximately equal in weight, it would have received award had the agency not made the two adjustments.

When an agency evaluates proposals for the award of a cost reimbursement contract, a cost realism evaluation must be performed to determine the extent to which an offeror's proposed costs represent what the contract should actually cost, assuming reasonable economy and efficiency. MR&S/AME, An MSC Joint Venture, B-250313.2, Mar. 19, 1993, 93-1 CPD ¶ 245. Our review of cost realism evaluations is limited to determining whether the agency's cost analysis is reasonably based. Id. We find that NASA's cost realism evaluation, specifically, the upward adjustment of FMC's proposed G&A rate was reasonable. (In light of our conclusion regarding the firm's G&A rate, we need not consider whether the agency improperly adjusted its subcontractor's direct labor costs upward, since the absence of that adjustment, by itself, would not make FMC's cost low.)²

¹(...continued)

evaluation for all firms, assigning a percentile score for each proposal under each element of the evaluation scheme. Second, the individual evaluator scores are not as important as the ultimate consensus scoring, and the overriding concern for our purposes is whether the final scores assigned accurately reflect the relative merits of the proposals, and not whether these scores are mathematically traceable to the individual evaluator scores. Schweizer Aircraft Corp., B-248640.2; B-248640.3, Sept. 14, 1992, 92-2 CPD ¶ 200; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. We have found no basis to object to NASA's evaluation of FMC's proposal, and the record shows that the evaluators' scores accurately reflected the relative merits of the proposals.

²The record shows that NCI's evaluated cost was \$17,657,895, while FMC's evaluated cost was \$18,099,589. Even if reduced by [deleted], the firm's evaluated cost still would be [deleted], which is higher than NCI's evaluated cost.

The record shows that FMC proposed an average G&A rate for the entire contract of [deleted] percent, and that the agency adjusted this upward to reflect a rate of [deleted] percent over the life of the contract. FMC based its G&A rate on its own projections of substantial company growth during the contract's period of performance. NASA believed that the growth projections--and thus the proposed G&A rates--were unreasonably optimistic.

The upward adjustment in FMC's G&A rate was reasonable. The record shows that for the period of 1991 through 1993, FMC's actual G&A rates were [deleted] percent respectively, and that its actual rate for the first 5 months of 1994 was [deleted] percent (the 1994 figure was supplied by the Defense Contract Audit Agency (DCAA) in response to NASA's request for information relating to FMC's cost proposal). NASA's cost evaluators based the G&A rate of [deleted] percent on FMC's historical rates, as adjusted for company growth that would occur if FMC were awarded this contract, but not adjusted for any other projections of growth claimed by FMC. We see nothing wrong with this approach. FMC's proposal contained no discussion of contracts already awarded that would contribute to its projected growth; the proposal stated only that the proposed rates represent a continuation of the trend of growth attributable to the firm. In addition, FMC did not offer to [deleted]. Under these circumstances, we think NASA reasonably could base its cost realism evaluation on the firm's actual historical rates (as disclosed by the firm's proposal and DCAA's report of FMC's current rate for 1994), as adjusted to account for the award of this contract. See MR&S/AME, An MSC Joint Venture, supra (where firm's projected indirect rates were below historical and current rates, firm did not include information in its proposal showing that its projections were based on performance of contracts actually awarded, and projections of growth were based only on firm's estimates of its likelihood of success in obtaining contracts, agency reasonably based calculation of indirect rates on firm's historical rates rather than unsupported growth projections).

COST/TECHNICAL TRADEOFF

FMC challenges the propriety of NASA's cost/technical tradeoff, maintaining that if NASA had properly evaluated both its cost and technical proposals, FMC's proposal would have been among the top-rated proposals for source selection purposes. FMC also maintains that, in making its source selection decision, NASA gave undue weight to technical considerations and thereby failed to adequately consider cost. As already discussed, we find nothing objectionable in the evaluation of FMC's cost or technical proposal. Since FMC does not challenge the evaluation of the awardee's

proposal from either a cost or technical standpoint, it follows that the overall evaluation was reasonable. NCI's proposal was both technically superior to FMC's and lower in cost. This being the case, no tradeoff between FMC's and NCI's proposals was necessary; NCI was entitled to the award.

DISCUSSIONS

FMC contends that all of its proposal weaknesses were correctable, and that it therefore should have been given an opportunity to address these in discussions.³ FMC also maintains that NASA was required under the terms of the solicitation to discuss the DCAA findings (relating to the firm's G&A rate) relied on by NASA during its cost evaluation.

Where a solicitation is issued by NASA or a Defense Department agency and advises offerors of the possibility that award may be made without discussions, the agency may properly make award on the basis of initial offers without engaging in negotiations. FAR § 15.610; Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251. While the contracting officer has the discretion to conduct discussions in such circumstances, the contracting officer may dispense with discussions where there is a reasonable basis to conclude that the proposal of the intended awardee represents the best overall value to the government; we will review the matter only to ensure that the contracting officer's determination was reasonable. Id.

The RFP included the clause appearing at FAR § 52.215-16, Alternate III, which provided that the agency intended to perform its evaluation and make award on the basis of initial proposals without discussions; the clause further advised offerors to submit their most favorable terms in their initial offers because of the potential for award without discussions. Further, as already discussed, NASA's evaluation of proposals and ultimate selection of NCI's proposal as representing the best value to the government

³FMC also maintains that NASA improperly established a competitive range that included only NCI's proposal. This fact is immaterial, however, since the sole purpose of establishing a competitive range is to determine with which competing firms the agency will engage in discussions, and no discussions were held here. Federal Acquisition Regulation (FAR) § 15.609.

were unobjectionable. Under these circumstances, NASA was not required to engage in discussions prior to making its source selection.⁴

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

⁴FMC contends that NASA was required by the terms of the RFP to discuss the information obtained from DCAA. The RFP language on which FMC's argument is based stated that:

"any outstanding differences in accounting or estimating procedures between the offeror and their cognizant [DCAA] auditor should be fully explained to assure that NASA is able to fairly evaluate both sides of the issue."

This language in no way indicated that the agency intended automatically to engage in discussions; rather we read the provision as merely indicating information to be included in initial proposals. NASA thus was not required to discuss this information with FMC.